Supreme Court, U.S.
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93-605

Case No.: _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

ESTATE OF HELEN SMITH, by and through its Personal Representative, SHEILA R. JORDAN, and on behalf of the ESTATE and the Decedent's survivors, TWINDA SMITH, SHON WARD, SHEILA JORDAN and CLYDELL CRAWFORD,

Petitioners,

-vs-

CITY OF HOLLYWOOD, a political subdivision of the State of Florida, LIEUTENANT DAVID KORDZIKOWSKI, SERGEANT RICHARD ALLEN and M S and S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT APPEAL OF THE STATE OF FLORIDA

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QUESTION PRESENTED

May Helen Smith's surviving children and estate state a cause of action against City of Hollywood, Florida, police officers for deprivation of the decedent's substantive due process rights under the Fourteenth Amendment resulting from the institution of an unnecessary and dangerous high speed, police pursuit of a petty thief which ended when the suspect's vehicle crashed with the automobile operated by Ms. Smith?

PARTIES IN PROCEEDINGS IN DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA

There has been no change in the parties participating in this case subsequent to the issuance of the opinion by the Florida District Court of Appeal, Fourth District, or subsequent to the Florida Supreme Court's opinion declining jurisdiction.

TABLE OF CONTENTS

Question Presented i

Parties in Proceedings ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 2

Law in Question 2

Statement of the Case 3

Reasons for Granting this Writ 6

1. The Opinion of The District Court of Appeal of the State of Florida is in conflict with the decisions of several federal courts in similar cases and is inconsistent with the Petitioner's Fourteenth Amendment right to substantive due process . . . 6

Conclusion 20

Appendix A-1

TABLE OF AUTHORITIES

Cases:

Supreme Court

Brower v. County of Inyo, 489 U.S. 593,
109 S.Ct. 1378, 103 L.Ed.2d 623(1988). . . 9, 10, 18

Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662,
88 L.Ed.2d 662 (1985). 9, 10, 11, 18

Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908,
68 L.Ed.2d 420 (1981). 8

West v. Atkins, 487 U.S. 42, 108 S.Ct. 2250,
101 L.Ed.2d 40 (1988). 8

Other Jurisdictions

Cannon v. Taylor, 782 F.2d 943
(11th Cir. 1986). 8, 12, 13, A-3

Frye v. Town of Akron, 759 F.Supp. 1320
(N.D. Ind. 1991). 15, 16, 17

Nishiyama v. Dixon county, Tennessee, 814 F.2d 277
(6th Cir. 1987). 8, 11, 12

Roach v. City of Fredericktown, Missouri, 882 F.2d 294
(8th Cir. 1989). 8,12

Tempkin v. Frederick County Commissioners, 945 F.2d 716
(4th Cir. 1991), cert. den., _____ U.S.____,
112 S.Ct.1172, 117 L.Ed.2d 417 (1992). 8

Statutes and Rules:

28 U.S.C. § 1257 (3) 2

42 U.S.C. § 1983 . . . . . .
. . . . . 2, 3, 6, 7, 8, 11, 12, 13, 18, 20, A-3, A-7, A-16

OPINIONS BELOW

The opinion of the Florida District Court of Appeal, Fourth District, is not yet reported. A copy of the opinion is contained in the Appendix at A-2., infra. The order of the Florida Supreme Court declining discretionary jurisdiction is contained in the Appendix at A-4., infra.

JURISDICTION

On June 16, 1993 the Florida Supreme Court declined discretionary review of the March 3, 1993 opinion issued by the Florida District Court of Appeal, Fourth District, in which that Court held the Petitioners herein could not state a cause of action under 42 U.S.C. Section 1983 or the Fourteenth Amendment to the United States Constitution. All state remedies have been exhausted, therefore the jurisdiction of this Court is authorized under 28 U.S.C. Section 1257 (3).

LAW IN QUESTION

The Fourteenth Amendment to the United States Constitution, section one, states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1983 states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceedings for redress.

STATEMENT OF THE CASE

This action was commenced upon the filing of a first amended complaint against both the City of Hollywood and Respondents Kordzikowski and Allen. App. 6. That complaint alleged, inter alia, that the City of Hollywood and the Respondent officers violated Helen Smith's civil rights under the Fourteenth Amendment of the United States Constitution and thus provided a cause of action pursuant to 42 U.S.C. Section 1983. Upon consideration of their respective motions to dismiss, the trial judge dismissed with prejudice the Section 1983 action against Respondents Kordzikowski and Allen while refusing to dismiss similar

counts directed to the City of Hollywood.

The first amended complaint alleged that Helen Smith was killed when the car she was driving was struck by a vehicle driven by a petty theft suspect being pursued at high speed by City of Hollywood police officers. Ms. Smith predeceased three daughters and her mother, Petitioners herein.

The chase began on July 16, 1989 when the Respondents, while sitting in their unmarked police vehicle, observed a woman yelling at the occupants of a fleeing automobile. The officers did not speak to the woman to learn that she had obtained the vehicle's tag number, nor did they observe any physical danger to her. Rather, they began a high speed automobile pursuit of the suspects through the densely populated areas of Hollywood and Dania, Florida. App. 10, 11. Respondent Kordzikowski was the shift commander and acting supervisor of all City of Hollywood police officers at the time. Respondent Allen was occupying the passenger seat of Kordzikowski's vehicle and was the

next acting supervisor within the zone of the City of Hollywood where the chase began. App. 16.

Other police vehicles joined the chase through residential streets until the suspect's vehicle came to a dead end. The Respondents made no attempt to block or seize the suspect vehicle but, instead, allowed it to renew its effort to flee. App. 12, 13.

The chase continued over a distance exceeding seven miles and at speeds approaching ninety miles per hour. App. 13, 14. The Respondents in their attempt to apprehend the suspect car struck another innocent motorist during the chase. App. 11.

Contemporaneous with the chase, Helen Smith was driving her car just east of a local railroad crossing. The suspect vehicle, with the Respondents in hot pursuit, crossed the railroad tracks at ninety miles per hour, became airborne, and struck Helen Smith's car on the front, driver's side. Helen Smith died as a result of the injuries received in that crash. App. 13.

The first amended complaint further alleges that the Respondents initiated and controlled the chase from beginning to end. Kordzikowski and Allen decided to conduct the pursuit despite the risk of death or serious injury to innocent third persons which outweighed any purpose for which the chase could have been started. App. 14.

The Florida District Court of Appeal, Fourth District, affirmed the trial court's dismissal of the first amended complaint as to Respondents Kordzikowski and Allen. That court stated that the Petitioners could not state a viable cause of action under Section 1983. App. 2 - 4.

The Florida Supreme court declined discretionary jurisdiction. App. 5, 6.

REASONS FOR GRANTING THE WRIT

I. THE OPINION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA IS IN CONFLICT WITH THE DECISIONS OF SEVERAL FEDERAL COURTS IN SIMILAR CASES AND IS INCONSISTENT WITH THE PETITIONER'S FOURTEENTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS.

The District Court of Appeal for the State of Florida,

Fourth District, confirmed the trial court's judgment of dismissal of the first amended complaint and further refused to allow amendment of the complaint upon its determination that "it is apparent that in this instance no viable cause of action under Section 1983 can be alleged against the police officers". App. 4. It is clearly the Appellate Court's decision that no cause of action exists under 42 U.S.C. Section 1983 for violation of Helen Smith's civil rights provided by the Fourteenth Amendment to the United States Constitution.

The District Court of Appeal's construction of federal law to preclude a Section 1983 cause of action conflicts with most every decision issued by federal courts on this issue. The District Court has apparently adopted the Respondents' argument that no cause of action can exist upon the death of an innocent motorist following a police chase regardless of the police officers actions leading to the tragic event. Its holding is contrary to the general body of federal law which permits such a cause of action upon the prerequisite finding of improper police conduct. Nishiyama v. Dixon County,

Tennessee, 814 F.2d 277 (6th Cir. 1987); Roach v. City of Fredericktown, Missouri, 882 F.2d 294 (8th Cir. 1989); Cannon v. Taylor, 782 F.2d 943 (11th Cir. 1986). Tempkin v. Frederick County Commissioners, 945 F.2d 716 (4th Cir. 1991), cert. denied, ___U.S.____, 112 S.Ct. 1172, 117 L.Ed. 2d 417 (1992).

The first amended complaint stated a cause of action under Section 1983 if it contained sufficient facts to establish that (1) the conduct complained of by officers Kordzikowski and Allen were committed under color of state law, and (2) their conduct deprived Helen Smith of her life without due process of law. Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981); West v. Atkins, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

It is undisputed that the officers were acting under color of state law.

There is also no question but that certain state action may rise to the level of a substantive due process violation. Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d

662 (1985). This Court in Daniels last addressed the standard applicable to a substantive due process claim. That decision held that such a deprivation must flow from conduct amounting to more than negligence, but reserved the question as to what types of conduct short of intentional acts would be sufficient to invoke substantive due process protection. Daniels at 334, n. 3. Although not further addressed by the Supreme Court, the various United States Courts of Appeal have attempted to define the standard. The proclaimed standards are varied and should be reconciled by this Court.

Furthermore, this Court's decision in Brower v. County of Inyo, 489 U.S. 593, 109 S.C.T. 1378 L.Ed.2d 623 (1988) acknowledged Daniels in addressing for the first time whether injury or death of a fleeing suspect caused by the conduct of a police officer during a high speed chase warrants constitutional protections. In Brower, a fleeing car thief was killed during a high speed chase when police officers placed an 18-wheel truck completely across a roadway, behind a

curve, with police vehicle headlights aimed to blind the sight of the approaching suspect. Brower at 594.

Although the Brower decision involved a "seizure" and is factually inapplicable to the facts alleged in this case, it is important to emphasize that this Court has now recognized the need to address an individual's constitutional protections from the carnage that is occurring on our nation's roadways as a result of indiscriminate police chases. Like Daniels, however, the Brower decision did not establish a standard to be applied to substantive due process claims arising from injury to an innocent motorist caused by police conduct during a pursuit.

A review of federal court decisions reveals that in absence of a Supreme Court pronouncement on the issue, the courts have floundered to establish a consistent and fair standard when a substantive due process claim is made.

The United States Court of Appeals, Sixth Circuit, held in the case of Nishiyama v. Dixon County, Tennessee, 814 F.2d 277 (6th Cir. 1987) that the plaintiff's complaint was

sufficient to maintain a cause of action for substantive due process violations under Section 1983. The complaint alleged that the Dixon County Sheriff's Department permitted a prison "trusty" to operate a sheriff's patrol car without supervision. The "trusty" was operating the police unit on a public roadway when he directed a female motorist to pull over to the side of the road. When she did, the "trusty" approached her and beat her. The complaint further alleged that the "trusty" had use of this vehicle over several months in order to perform personal tasks for two officers. The complaint alleged that the actions of the Dixon County Sheriff's Office were grossly negligent and proximately caused Kathy Nishiyama's death.

The Nishiyama court acknowledged that Daniels v. Williams provided that the mere negligent act of an official causing unintended injury or death did not implicate due process protections. The court went on to define the standard as follows:

> In our view, a person may be said to act in such a way as to

> trigger a § 1983 claim if he intentionally does something unreasonable with disregard to a known risk or a risk so obvious that he must be assumed to have been aware of it, and of a magnitude such that it is highly probable that harm will follow.

Nishiyama at 814 (emphasis added).

The United States Court of Appeals, Eighth Circuit, utilizes the same standard as does the Sixth Circuit. Roach v. City of Fredericktown, Missouri, 882 F.2d, 294 (8th Cir. 1989).

Cannon v. Taylor, 782 F.2d 943 (11th Cir. 1986), the only applicable decision in the Eleventh Circuit, generally addresses the issue at bar but is not directly on point. In Cannon, the police officer was responding to a disturbance call at a local pool hall. The officer drove his police vehicle without flashing lights or siren at a mere forty six miles per hour in a thirty mile per hour zone. The officer negligently operated his unit so that it struck Mrs. Cannon's automobile resulting in her death. The Court held that the negligent

operation of a motor vehicle by a police officer acting in the line of duty did not give rise to a Section 1983 cause of action.

The case at bar is distinguishable. The Cannon complaint merely alleged that a police officer was negligent in operating his motor vehicle by driving sixteen miles an hour over the speed limit without his flashing lights or siren. It could not be said that officer Taylor acted recklessly nor did he act with disregard to the known and significant risk of injury or death to innocent bystanders or motorists.

In contrast, officers Kordzikowski and Allen chose to start and continue a high speed chase covering many miles through residential neighborhoods. Their actions were clearly reckless and in disregard of obvious risks.

There is little question that the District Court of Appeals for the State of Florida erred in finding that a cause of action cannot be stated by an innocent victim of a car crash resulting from an ill advised police chase and, although this Court has not yet established a precise standard, the

Petitioners have alleged facts sufficient to state a cause of action even under the most strict test applied by lower, federal courts.

The actions of officers Kordzikowski and Allen were not only reckless but shocking to the judicial conscience. They started a dangerous, high speed chase after a minor crime on property. There was no urgent need to chase the suspect. A single inquiry to the victim would have identified the suspect to allow apprehension under a more controlled circumstance. The suspect was not known to them to be violent or to be dangerous if permitted to leave the scene without pursuit. The officers themselves were involved in a collision during the course of the chase which they began. The ensuing chase reached speeds many times the speed limit in residential areas despite the obvious, known risk of death or serious injury to innocent members of the public. Kordzikowski and Allen were content to continue and encourage the speeding vehicles with no effort to stop the chase or the fleeing suspect, despite at least one clear

opportunity to do so, until the fleeing suspect collided with an innocent motorist. The officers' decisions and actions fell directly within the elements set forth by all United States Circuit Courts of Appeal which have spoken on the issue, including the Eleventh Circuit.

A similar, although less factually egregious case of inappropriate police conduct was considered in Frye v. Town of Akron, 759 F.Supp. 1320 (N.D. Ind. 1991). In Frye a police officer observed a motorcyclist with a passenger weaving across the center lane of the highway on two or three occasions. The officer attempted to stop the motorcyclist and a high speed chase ensued. During the chase the motorcyclist lost control when the police officer unintentionally struck the motorcyclist. The impact was accidental and not intended for the purpose of "seizing" the motorcyclist. Frye at 1323. The Frye Court considered which standard to apply to the substantive due process claim and in so doing weighed the alleged governmental misconduct against the risk of harm foreseeably created. That Court

ultimately utilized a "reckless" standard and held:

> Taking the factual allegations of the Plaintiff's as true, the Court finds that it does not appear beyond doubt that Plaintiff's will not be able to prove [the police officer] acted so recklessly that [he deprived the passenger] of her substantive due process rights. Consequently, Plaintiff's Fourteenth Amendment claim against [the police officer] will not be dismissed.

Frye at 1325.

The factual allegations in the First Amended Complaint in the case at bar establish conduct which is even more shocking than the conduct recognized in Frye to have satisfied the higher standard of reckless behavior.

In Frye, the reason for commencement of the chase was the police officer's observations of the motorcyclist weaving across the center line of the roadway on as many as three different occasions. It was apparent that innocent motorists and the passenger were in danger from the motorcyclist, thus justifying commencement of the chase. However, in the case at bar, Kordzikowski and Allen at most observed a petty theft from a motor vehicle. Before the chase began, no lives were endangered. Appellees

Kordzikowski and Allen knowingly created a danger to innocent motorists for reasons far less justified than those of the police officer in Frye.

By instituting the high speed chase the Respondents subjected innocent persons to a an obvious and serious risk of bodily injury without sufficient justification. This is illustrated by the collision which occurred between the police vehicle and an uninvolved motorist early in the chase.

The allegations against officers Kordzikowski and Allen meet even the most rigorous of standards set forth by the decisions of the United States Circuits. In fact, the allegations establish actionable misconduct far greater than even the standard of recklessness required in the Seventh and Fourth Circuits. Therefore, the allegations of the First Amended Complaint are sufficient to meet the standard applicable to substantive due process claim under the less stringent standard in the Eleventh Circuit.

Furthermore, it is logical and compelling that substantive due process protection should be afforded Helen

Smith, her heirs, and the motoring public. Otherwise, it is easy to foresee that fleeing suspects who are intentionally "seized" by police would be constitutionally protected by the Fourth Amendment through Section 1983 liability, but the unsuspecting, innocent motorist killed because of reckless police behavior would not. Such an illogical restriction of the Fourteenth Amendment right as recognized in both Brower and Daniels would send a message to every police department in the United States that their officers are free to indiscriminately conduct chases so long as no attempt is made to physically stop the suspect. Such a result would encourage police to conduct more unjustifiable chases despite the obvious known danger. Police officers would simply be told to escort this speeding suspect until he collides with an innocent motorist or runs out of gas. In the case at bar, the suspects' tank did not empty before the death of Helen Smith.

This Court should take action here, upon the opportunity presented, to reconcile the disparate views held

by federal courts concerning the proper standard applicable to substantive due process claims based upon unintentional, inappropriate police action. A defining standard would allow police departments to better assess their options when deciding whether to chase. A defining standard may decrease the deaths resultant from imprudent police chases.

CONCLUSION

Thus, the Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the District Court of Appeal for the State of Florida, Fourth District, which stated that the Petitioners could not maintain a cause of action under 42 U.S.C. 1983 and the Fourteenth Amendment to the United States Constitution for denial of Helen Smith's right to substantive due process.

Respectfully submitted,

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APPENDIX

Case No.: _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

ESTATE OF HELEN SMITH, by and through its Personal Representative, SHEILA R. JORDAN, and on behalf of the ESTATE and the Decedent's survivors, TWINDA SMITH, SHON WARD, SHEILA JORDAN and CLYDELL CRAWFORD,

Petitioners,

-vs-

CITY OF HOLLYWOOD, a political subdivision of the State of Florida, LIEUTENANT DAVID KORDZIKOWSKI, SERGEANT RICHARD ALLEN and M S and S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT APPEAL OF THE STATE OF FLORIDA

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FOURTH DISTRICT
JANUARY TERM 1993

ESTATE OF HELEN SMITH, by and through its Personal Representative, SHEILA R. JORDAN, and on behalf of the ESTATE and the Decedent's survivors, TWINDA SMITH, SHON WARD, SHEILA JORDAN and CLYDELL CRAWFORD,

Appellants,

-vs-

CITY OF HOLLYWOOD, a political subdivision of the State of Florida, LIEUTENANT DAVID KORDZIKOWSKI, SERGEANT RICHARD ALLEN and M S and S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD,

Appellees.

_____)

CASE NO. 92-0475
L.T. NO. 90-31868-06

Opinion Filed March 3, 1993

Appeal from the Circuit Court for Broward County; Geoffrey D.Cohen, Judge.

Timothy P. Beavers and Michael G.Kaplan, Fort Lauderdale, for appellants.

Michael R. Piper of Johnson, Anselm, Murdoch, Burke & George, P.A., Fort Lauderdale, for Appellee-Kordzikowski.

B.J. Cummins of Cummins, Bass And Diaz, P.A., Fort Lauderdale, for Appellee-Allen.

OWEN, WILLIAM C., JR., Senior Judge

Appellants' decedent died as a result of injuries sustained when the car which she was operating was struck by a speeding vehicle being pursued by units of the Hollywood Police Department. The trial court dismissed with prejudice the count of appellants' amended complaint which sought to state a cause of action under 42 U.S.C. § 1983 against two of the police officers involved in the high speed chase. We affirm the judgment of dismissal on the authority of Cannon v. Taylor, 782 F. 2d 947 (11th Cir. 1986) and Jones v. Sherrill, 827 F. 2d 1102 (6th Cir. 1987). While ordinarily leave to amend is granted when a complaint is dismissed for failure to state a cause of action, it is apparent that in this instance no viable cause of action under Section 1983 can be alleged against the police officers.

AFFIRMED. ANSTEAD and WARNER, JJ, concur.

SUPREME COURT OF FLORIDA

WEDNESDAY, JUNE 16, 1993

ESTATE OF HELEN SMITH, etc.

Petitioners,

v.

CITY OF HOLLYWOOD, etc.,

Respondents.

* * * * * * * * * * * * * * * * *

CASE NO. 81, 569
District Court of Appeal,
4th District - No. 92-0475

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3 (b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

MCDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur

TC

cc: Hon. Marilyn N. Beuttenmuller, Clerk
Hon. Robert E. Lockwood, Clerk
Hon. Geoffrey D. Cohen, Judge
Mr. Michael G. Kaplan
Mr. Timothy P. Beavers
Mr. B.J. Cummins
Mr. Michael R. Piper
Ms. Stephanie W. Werner
Mr. Edward R. Nicklaus
Mr. William E. Platow

A True Copy
ATTEST:
Sid J. White, Clerk, Supreme Court

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO.: 90-31868-06
FLORIDA BAR NO: 258393

ESTATE OF HELEN SMITH, by and through its Personal Representative, SHEILA R. JORDAN, and on behalf of the ESTATE and the Decedent's survivors, TWINDA SMITH, SHON WARD, SHEILA JORDAN and CLYDELL CRAWFORD,

Plaintiffs,

-vs-

CITY OF HOLLYWOOD, a political subdivision of the State of Florida, LIEUTENANT DAVID KORDZIKOWSKI, SERGEANT RICHARD ALLEN and M S and S TOYOTA, INC, d/b/a TOYOTA OF HOMESTEAD,

Defendants.

FIRST AMENDED COMPLAINT FOR WRONGFUL DEATH

Plaintiff, ESTATE OF HELEN SMITH ["ESTATE"], by and through its Personal Representative, SHEILA R. JORDAN, on behalf of the Estate and of the Survivors, TWINDA SMITH, SHON WARD, SHEILA JORDAN, and CLYDELL CRAWFORD,

sues Defendant CITY OF HOLLYWOOD ["HOLLYWOOD"], a political subdivision of the State of Florida, LIEUTENANT DAVID KORDZIKOWSKI ["KORDZIKOWSKI"], SERGEANT RICHARD ALLEN ["ALLEN"] and M S and S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD ["TOYOTA"], and alleges:

JURISDICTION

1. This is an action for damages greatly in excess of Ten Thousand and 00/100 ($10,000.00) Dollars, exclusive of interest and costs.

2. This is also an action brought pursuant to 42 USC Section 1983, et seq; the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; and Article I of the Florida Constitution, subject to the concurrent jurisdiction of this Court.

THE PARTIES

3. The Decedent, HELEN SMITH, died on July 16, 1989, at the age of 42. Plaintiff, SHEILA R. JORDAN, one of the decedent's three daughters, has been appointed Personal Representative to bring suit on behalf of the ESTATE and each individual survivor pursuant to Section 768.16, et seq., Florida Statutes.

4. The three children of the decedent, Twinda Smith, Shon Ward and Sheila Jordan, are survivors of the decedent. The decedent's mother, Clydell Crawford, is also a survivor of the decedent as set forth in Paragraph 56, infra, of this Complaint.

5. The ESTATE of Helen Smith also seeks damages pursuant to Section 768.16, et.seq, Florida Statutes, as set forth hereinafter.

6. Defendant, CITY OF HOLLYWOOD, is a political subdivision of the State of Florida located in Broward County, Florida.

7. At all times material herein, Defendant, LIEUTENANT DAVID KORDZIKOWSKI, is a police officer employed by Defendant HOLLYWOOD's Police Department, and is acting as the agent, servant and/or employee of HOLLYWOOD. Defendant KORDZIKOWSKI was acting in his official capacity and was acting under color of state law at the time of the acts and omissions which form the basis of this action.

8. At all times material herein, Defendant, SERGEANT RICHARD ALLEN, is a police officer employed by Defendant HOLLYWOOD's Police Department, and is acting as the agent, servant and/or employee of HOLLYWOOD. Defendant ALLEN was acting in his official capacity and was acting under color of state law at the time of the acts and omissions which form the basis of this action.

9. Plaintiff has complied with the conditions precedent of Section 768.28, Florida Statutes. Written notice of the state law claims set forth herein were presented to Defendant HOLLYWOOD by registered mail, pursuant to Section 768.28 (6), Florida Statutes, along with a copy to the State of Florida Insurance Commissioner's office. By reason of Defendant HOLLYWOOD's failure to make any final disposition or deny Plaintiff's state law claims prior to the expiration of six (6) months after said notice was given, Plaintiff is entitled to bring the state law causes of action. Attached as Exhibit "A" is a copy of said notice and return receipt.

10. At all times material herein, Defendant, M S and

S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD, is a corporation organized and existing under the laws of the State of Florida. Defendant, TOYOTA, has an agent and is doing business in Broward County, Florida.

COUNT I

CLAIM OF NEGLIGENCE AGAINST DEFENDANT HOLLYWOOD

11. The allegations in paragraphs 1 through 10, supra, are adopted and realleged as if fully set forth herein.

12. On Sunday, July 16, 1989, at approximately 10:45 a.m., a lady was returning from Hollywood beach to her parked vehicle when she observed a man taking her grey plastic makeup bag containing bottles of liquor from the trunk of her vehicle.

13. When the lady asked the man what he was doing in her car, the man ran with the bag of liquor and got into a Toyota Celica convertible with another man behind the wheel. The lady yelled at the man as they drove away, and she

observed the license plate of their vehicle.

14. At that time, two Hollywood police officers were parked nearby in an unmarked police vehicle when they observed the Toyota Celica speeding away. The police officers started chasing the occupants of the Toyota Celica at a high rate of speed.

15. Numerous other Hollywood police vehicles began participating in the chase of the Toyota. At least six to seven Hollywood police vehicles gave chase at speeds up to 90 miles per hour on the residential streets in Hollywood and Dania.

16. The Toyota sped from the beach area to State Road A1A with the unmarked Hollywood police vehicle in close pursuit. As the Toyota proceeded north on A1A, the unmarked police vehicle collided with another northbound vehicle as the police vehicle turned onto A1A northbound.

17. The unmarked police vehicle continued to give chase when it was overtaken by a marked Hollywood police vehicle. Both vehicles continued northbound on A1A chasing

the Toyota at high rates of speed and into the City of Dania.

18. As the Toyota continued north toward the City of Dania, a third Hollywood police vehicle waited on Dania Beach Boulevard just west of the drawbridge listening to the description of the chase as it proceeded northward towards Dania Beach Boulevard. The Toyota exited A1A and onto the circular overpass of Dania Beach Boulevard, and proceeded across the intracoastal westbound on Dania Beach Boulevard. As the Toyota crossed the intracoastal bridge westbound, the third Hollywood police vehicle was waiting. As the Toyota continued westbound on Dania Beach Boulevard and passed the waiting Hollywood police vehicle, that police vehicle joined the chase and became the lead chase vehicle.

19. The Toyota continued westbound on Dania Beach Boulevard toward Federal Highway and Dania with the three Hollywood police vehicles in hot pursuit.

20. At the intersection with Federal Highway, the

Toyota turned and headed north with the three police vehicles in pursuit. At or near the interSection of Dania Beach Boulevard and Federal Highway, three more Hollywood police vehicles were waiting and joined the chase.

21. The Toyota proceeded north on Federal Highway to Northwest 1st Street and then turned westbound onto Northwest 1st Street. As it continued westbound on Northwest 1st Street, the six Hollywood police vehicles continued the chase.

22. The Toyota headed west on Northwest 1st Street until it came to a stop at the dead end of westbound Northwest 1st Street. The first chase police vehicle came to a stop behind the stopped Toyota. The next three chase vehicles also came to a stop before the dead end and west of the last interSection on Northwest 1st Street.

23. At that point, the Toyota turned around and started heading back eastbound on Northwest 1st Street, the same route it had followed to the dead end. Each of the

Hollywood police vehicles moved out of the path of the Toyota to allow it to proceed back eastbound and then proceeded to chase the Toyota again on Northwest 1st Street at speeds up to 90 miles per hour.

24. The Toyota continued speeding eastbound on Northwest 1st Street at nearly 90 miles per hour with the police vehicles in pursuit.

25. At the interSection of Northwest 3rd Avenue and Northwest 1st Street, the decedent, Helen Smith, was turning her vehicle from Northwest 3rd Avenue to go westbound on Northwest 1st Street. At that time, the eastbound Toyota crossed the railroad tracks at approximately 90 miles per hour, went airborne and landed on the pavement and struck the vehicle being driven by Helen Smith on the front driver's side. The decedent was pronounced dead at Broward General Hospital later that day.

26. The police chase had covered approximately seven miles through well populated residential streets at speeds approaching 90 miles per hour. The chase continued

through numerous traffic lights and stop signs.

27. Defendant HOLLYWOOD was negligent in the manner and extent to which it caused and conducted the police chase which lead to the death of decedent. Defendant negligently commenced a police chase and failed to terminate or cease the chase when it was apparent that the foreseeable risk of serious bodily injury or death to an innocent third person such as the decedent, Helen Smith, outweighed the purpose for which the chase was started.

28. Defendant HOLLYWOOD created a dangerous condition of which it knew or should have known in the exercise of reasonable care and failed to correct or to warn against said dangerous condition to persons such as the decedent who could be injured by said condition.

29. The negligence of Defendant HOLLYWOOD as described above was the direct and proximate cause of the death of Helen Smith.

30. As a direct and proximate result of the negligence of Defendant HOLLYWOOD, the Estate of Helen Smith and

each survivor of Helen Smith have suffered grievous damages as set forth in Paragraphs 52 through 57, infra, of this Complaint.

COUNT II

CLAIM AGAINST DEFENDANTS' HOLLYWOOD, KORDZIKOWSKI AND ALLEN UNDER 42 USC Section 1983, ET SEQ.

31. The allegations in Paragraphs 1 through 30, supra, are adopted and realleged as if fully set forth herein.

32. Defendant HOLLYWOOD was at all times material herein responsible for the training and supervision of the conduct of its individual police officers. Said Defendant is responsible by law for enforcing the regulations and policy of Defendant, HOLLYWOOD's Police Department, and for insuring that Defendant HOLLYWOOD's police officers obey the laws, regulations and public policy of the State of Florida and the United States. Defendant HOLLYWOOD set official policy for law enforcement hiring, training and operating procedures applicable to police officers in conducting and

terminating police vehicle pursuits and in the use of force. Defendant HOLLYWOOD approved and acquiesced in the conduct of the individually named Defendants.

33. Defendant HOLLYWOOD failed to establish and enforce a policy toward police pursuits and the use of force, and failed to properly train its police officers to implement a safe and appropriate policy in initiating, conducting and terminating police pursuits and the use of force.

34. At all times material herein, Defendant KORDZIKOWSKI was the shift commander and acting supervisor of all police officers at the time of the subject police chase.

35. At all times material herein, Defendant ALLEN was the next acting supervisor in charge of all officers within the zone of the City of Hollywood where the subject police chase began. Sergeant Allen's immediate supervisor was Defendant KORDZIKOWSKI.

36. Defendant KORDZIKOWSKI and Defendant ALLEN were operating the unmarked police vehicle at the

time of commencement of the police chase as described in Paragraphs 14 through 26, supra, of this Complaint.

37. Defendant KORDZIKOWSKI and Defendant ALLEN made the decision to initiate the subject police chase and took charge in all decision making during the police chase. Defendants KORDZIKOWSKI and ALLEN were the officers who took charge in conducting operational tactics during the pursuit and deciding whether to terminate the pursuit.

38. The actions of the Defendants in initiating and maintaining the subject police chase were performed willfully and with complete and utter disregard of the foreseeable risk of serious bodily injury or death to an innocent third person such as the decedent, Helen Smith. Defendants willfully initiated and maintained the subject chase when the risk of death to an innocent third person outweighed any purpose for which the chase was started.

39. Defendants KORDZIKOWSKI and ALLEN failed to follow, were confused or were not properly trained in

interpreting the policy of the City of Hollywood relating to police pursuits and the use of force.

40. Defendant HOLLYWOOD encouraged and condoned the actions of the individual police officers by failing to implement an understood policy relating to police pursuits and the use of force; by violating policy, custom or practice relating to police pursuits and the use of force; and by failing to properly train and supervise law enforcement employees in the manner in which to conduct a police chase and the use of force. Defendant HOLLYWOOD committed further acts and/or omissions violating policy, custom or practice and the implementation of policy, custom or practice as may be revealed during discovery.

41. The conduct of Defendants deprived decedent, Helen Smith, of her civil rights, including but not limited to, the rights secured by Article I of the Florida Constitution, and the following rights, privileges and immunities secured to her by the Constitution of the United States:

A. The right of an individual to be secure in

her person and effects against privacy or unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States.

B. The right of an individual not to be deprived of life, liberty or property without due process of law, and the right to equal protection under the law, secured by the Fifth and Fourteenth Amendments to the Constitution of the United States.

C. The right of an individual to freedom of travel as secured to her by the Fourteenth Amendment to the Constitution of the United States.

D. The right of an individual to privacy secured to her by the First, Fourth and Fourteenth Amendments to the Constitution of the United States.

42. The above-described acts or omissions of Defendants were a direct and proximate cause of the death of Helen Smith. The Estate of Helen Smith and each survivor of Helen Smith have suffered grievous damages as set forth in paragraphs 52 through 57 of the Complaint.

COUNT III

CLAIM FOR NEGLIGENCE AGAINST DEFENDANT TOYOTA

43. The allegations of paragraphs 1, 3, 4, 10 & 25 are adopted and realleged as if fully set forth herein.

44. Defendant TOYOTA owed a duty of reasonable care in the maintenance and security of its vehicles on its dealership premises.

45. Prior to July 16, 1989, Defendant TOYOTA experienced a large number of thefts of its vehicles from its dealership premises. Yet, Defendant TOYOTA continued to maintain its vehicles on the lot with keys maintained in a box on the window of each vehicle twenty four hours a day.

46. Despite its experiences of thefts of its vehicles, Defendant TOYOTA failed to maintain its keys for the vehicles in a separate and secured area and failed to maintain security on its premises.

47. Defendant TOYOTA knew or should have known

that its vehicles were being stolen by individuals intent on committing crimes and that it was reasonably foreseeable that innocent third persons would be seriously injured or killed as a result of the actions of individuals using their stolen vehicles.

48. On or about July 16, 1989, Defendant TOYOTA was the owner of the Toyota Celica convertible involved in the police chase as described previously in this Complaint. The individuals operating the Toyota Celica at the time of the incident described in this Complaint had taken or been given use of the vehicle from Defendant TOYOTA'S premises shortly before July 16, 1989.

49. Defendant TOYOTA was negligent in failing to maintain and secure its premises to prevent the theft of its vehicles which Defendant TOYOTA knew or should have known would be used in the commission of criminal acts.

50. As a direct and proximate result of the negligence of Defendant TOYOTA, the decedent, Helen Smith, was killed when the Toyota Celica struck her vehicle during the

aforedescribed police chase.

51. As a direct and proximate result of the negligence of Defendant TOYOTA, the Estate of Helen Smith and each survivor of Helen Smith have suffered grievous damages as set forth in paragraphs 52 through 57 of this Complaint.

52. The decedent, Helen Smith, was survived by her three daughters, Twinda Smith, Shon Ward, Sheila Jordan and her mother, Clydell Crawford.

53. Helen Smith's surviving daughter, Twinda Smith, has suffered damages as follows:

A. The loss of support and services of the decedent from the date of decedent's death and in the future;

B. The loss of parental companionship, instruction and guidance from the date of decedent's death and in the future;

C. Mental pain and suffering from the date of decedent's death and in the future;

D. Medical and funeral expenses relating to the decedent to the extent such expenses have been paid by

the survivor.

54. Helen Smith's surviving daughter, Shon Ward, has suffered the following damages as follows:

A. The loss of support and services of the decedent from the date of decedent's death and in the future;

B. The loss of parental companionship, instruction and guidance from the date of decedent's death and in the future;

C. Mental pain and suffering from the date of decedent's death and in the future;

D. Medical and funeral expenses relating to the decedent to the extent such expenses have been paid by the survivor.

55. Helen Smith's surviving daughter, Sheila Jordan, has suffered the following damages as follows:

A. The loss of support and services of the decedent from the date of decedent's death and in the future.

B. The loss of parental companionship, instruction and guidance from the date of decedent's death

and in the future.

C. Mental pain and suffering from the date of decedent's death and in the future.

D. Medical and funeral expenses relating to the decedent to the extent such expenses have been paid by the survivor.

56. The decedent's surviving mother, Clydell Crawford, has suffered damages as follows:

A. The loss of support and services of the decedent from the date of decedent's death and in the future.

B. Medical and funeral expenses relating to the decedent to the extent such expense has been paid by said survivor.

57. As a direct and proximate result of the negligence of Defendant HOLLYWOOD, the ESTATE of Helen Smith has suffered damages as follows:

A. The loss of prospective net accumulations.

B. Property damage, including the loss of use and a expense of replacement value of the decedent's motor

vehicle to the extent said loss was not covered by collision insurance.

C. Medical and funeral expenses relating to the decedent that had become a charge against her Estate or that were paid on behalf of the decedent by the Estate.

WHEREFORE, the ESTATE OF HELEN SMITH, by and through its Personal Representative and on behalf of the survivors of the Estate, TWINDA SMITH, SHON WARD, SHEILA R. JORDAN and CLYDELL CRAWFORD, demands judgment for compensatory damages against the Defendants CITY OF HOLLYWOOD, LIEUTENANT DAVID KORDZIKOWSKI, SERGEANT RICHARD ALLEN and M S and S TOYOTA, INC., d/b/a TOYOTA OF HOMESTEAD, together with interest and costs, and demands trial by jury of all issues so triable as of right by a jury.

DATED: _____.

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